

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

POCO, LLC,

Plaintiff,

v.

FARMERS CROP INSURANCE

ALLIANCE, INC.,

Defendant.

NO. 4:14-cv-05106-SAB

**ORDER RE MOTIONS FOR
SUMMARY JUDGMENT**

Before the Court is Defendant's Motion for Summary Judgment, ECF No. 26; Defendant's Motion for Summary Judgment as to Breach of Contract and Unfair and Deceptive Practices Act Claims, ECF No. 27; Defendant's Motion for Summary Judgment as to Material Misrepresentation, ECF No. 28; and Plaintiff's Motion for Partial Summary Judgment. ECF No. 33. A hearing was held on March 16, 2016 in Richland, Washington. Plaintiff was represented by R. Bruce Johnston and Nathan J. Arnold. Defendant was represented by Thomas C. James, Jr. and Timothy D. Anderson. The Court took all motions under advisement.

Background

POCO, LLC, is a farming business operating in Franklin County, Washington. For several years, POCO purchased farm crop insurance from Defendant, Farmers Crop Insurance Alliance, Inc. ("FCIA"). In turn, the FCIA policy was partially reinsured by the Federal Crop Insurance Corporation

1 (“FCIC”). The FCIC was established by the Federal Crop Insurance Act. 7 U.S.C.
2 § 1501 et seq.

3 In June 2004, FCIA informed POCO it was voiding coverage for POCO’s
4 2003 crop year because FCIA determined POCO did not meet the definition of
5 “Qualifying Person” under the policy and because POCO had failed to timely
6 report and insure its potato crop and failed to apply for processing coverage on its
7 sweet corn. POCO submitted a Demand for Arbitration. In April 2005, the
8 Arbitrator awarded POCO indemnity plus interest in the amount of \$1,454,450.
9 The same day of the arbitration award, the United States Department of
10 Agriculture’s Risk Management Agency (“RMA”) sent FCIA a letter requesting
11 FCIA not disburse any additional claim payments under certain policies, including
12 POCO’s 2003 policy, because some of the underlying documentation for the
13 policy was being questioned.

14 FCIA filed a Complaint for Declaratory Judgment Vacating Arbitration
15 Award in district court in May 2005. The court affirmed the arbitration award in
16 August 2005. FCIA filed a Notice of Appeal the next month. FCIA contacted
17 RMA to seek guidance as to whether to prosecute the appeal or not. RMA replied
18 that it could not advise as to the appeal but that the upheld arbitration award was
19 eligible for reinsurance. A note regarding a separate phone call suggests FCIC
20 preferred that FCIA did not continue with its appeal.

21 FCIA and POCO negotiated a Settlement Agreement and FCIA dropped the
22 appeal. FCIA paid POCO \$1,400,000 in payment “to settle all disputes arising out
23 [of] the Subject Matter.” Subject Matter was defined as “claims [the parties have
24 or may have] against each other arising out of POCO’s claim for indemnity under
25 its 2003 federally-reinsured Multiple Peril Crop Insurance (MCPI) and Adjusted
26 Gross Revenue (AGR) policies, and Farmers Alliance’s handling and adjustment
27 of said claims.” The agreement was signed by FCIA and POCO representatives on
28 November 21, 2005.

1 On January 11, 2011, POCO and its principle, Mark Peterson, were indicted
2 by the federal government. The indictment alleged that POCO had knowingly
3 made false statements and overvalued property for the purpose of influencing the
4 FCIC. The indictment further claimed POCO knowingly devised a scheme to
5 defraud the United States and FCIC. The indictment referenced the Settlement
6 Agreement between FCIA and POCO and also listed FCIA as a victim. The
7 charges went to trial and all counts were ultimately dismissed.

8 POCO brought the instant suit against FCIA alleging breach of contract,
9 material misrepresentation, and unfair and deceptive acts and practices. POCO
10 also seeks costs and expenses, including reasonable attorneys' fees for the instant
11 action as well as its criminal defense.

12 *Motion Standard*

13 Summary judgment is appropriate if the "pleadings, depositions, answers to
14 interrogatories, and admissions on file, together with the affidavits, if any, show
15 that there is no genuine issue as to any material fact and that the moving party is
16 entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317,
17 323 (1986) (citing Fed. R. Civ. P. 56(c)). There is no genuine issue for trial unless
18 there is sufficient evidence favoring the nonmoving party for a jury to return a
19 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
20 (1986). The moving party has the burden of showing the absence of a genuine
21 issue of fact for trial. *Celotex*, 477 U.S. at 325.

22 In addition to showing that there are no questions of material fact, the
23 moving party must show that it is entitled to judgment as a matter of law. *Smith v.*
24 *Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party
25 is entitled to judgment as a matter of law if the non-moving party has failed to
26 make a sufficient showing on an essential element of a claim on which the non-
27 moving party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving
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1 party cannot rely on conclusory allegations alone to create an issue of material
2 fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

3 When considering a motion for summary judgment, a court may neither
4 weigh the evidence nor assess credibility; instead, “[t]he evidence of the non-
5 movant is to be believed, and all justifiable inferences are to be drawn in his
6 favor.” *Anderson*, 477 U.S. at 255.

7 *Analysis*

8 Defendant has filed three separate motions for summary judgment and
9 Plaintiff has filed one motion for partial summary judgment. Although the
10 specifics of each motion vary slightly, the dispositive questions are: did FCIA
11 make a material misrepresentation when it failed to disclose to POCO that POCO
12 was the subject of a governmental investigation, and did FCIA breach the
13 settlement agreement by purporting to release POCO from criminal liability on
14 behalf of the government when it did not have the authority to do so?
15 Additionally, FCIA argues that POCO’s claims are entirely preempted by federal
16 regulation. The Court concludes FCIA is entitled to summary judgment as a matter
17 of law on each claim.

18 POCO believes FCIA purported to release POCO from any possible claims
19 FCIC or the federal government had against POCO in the Settlement Agreement.
20 The provision POCO cites states:

21 Farmers Alliance, for itself and its insurance companies, heirs,
22 employees, agents, personal representatives, parent companies,
23 related companies, predecessors, successors and assigns, expressly
24 releases POCO and its insurance companies, heirs, employees, agents,
25 personal representatives, successors and assigns, from all liability for
claims, demands, judgments and liabilities of any kind whatsoever
arising out of the above-described Subject Matter.

26 Subject Matter is elsewhere defined as the claims the parties have or may have
27 “against each other arising out of POCO’s claim for indemnity under its 2003
28 federally-reinsured Multiple Peril Crop Insurance (MCPI) and Adjusted Gross

1 Revenue (AGR) policies, and Farmers Alliance’s handling and adjustment of said
2 claims.”

3 POCO argues FCIC, and therefore, the federal government, is an “insurance
4 compan[y]” of FCIA and was covered by the release. However, it strains
5 credibility to argue that POCO, who was ably represented by counsel, or FCIA,
6 interpreted the release to include any claims, including criminal, the federal
7 government may have had against POCO. It also strains a plain reading of the
8 Settlement Agreement to argue that criminal liability could be included in the
9 Subject Matter of the release.

10 If POCO truly believed that the federal government was an insurance
11 company of FCIA simply because FCIC reinsured part of the policy, its belief was
12 unjustified. Even if FCIC could properly be considered FCIA’s insurance
13 company, the Subject Matter of the Settlement Agreement was clearly limited to
14 POCO’s claim for indemnity under its 2003 policy and FCIA’s handling and
15 adjustment of that claim. Therefore, even if FCIA was FCIC’s agent—which it
16 was not—FCIA would only be releasing POCO from any claims relating to
17 FCIA’s handling and adjustment of the claim, not from criminal liability.

18 Had FCIA actually been, or held itself out as, an agent for FCIC, it does not
19 follow that FCIA would be an agent for the United States Attorney’s Office. In
20 other words, even had FCIA explicitly purported to release POCO from the
21 possibility of criminal sanctions, it would have been unreasonable for POCO to
22 rely on such representations. Any lawyer should know that a private insurance
23 company generally does not have the power to waive criminal sanctions on behalf
24 of the United States. A contrary assumption is unreasonable.

25 The Settlement Agreement, as limited by the Subject Matter, does not
26 include any waiver of criminal claims by FCIA. Even if it had, such provisions
27 would be obviously and apparently invalid. Accordingly, POCO’s claims against
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1 FCIA for breach of contract and material misrepresentation fail as a matter of law.
2 FCIA is entitled to summary judgment on those claims.

3 POCO's claim under the Washington Consumer Protection Act ("CPA") for
4 unfair or deceptive acts or practices also fails as a matter of law. As previously
5 explained, if POCO believed that FCIA was purporting to waive any possible
6 criminal charges against POCO, such belief was unfounded and unreasonable.

7 The first element necessary for a CPA claim is an unfair or deceptive
8 practice or act. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105
9 Wn. 2d 778, 784 (1986). An act or practice is unfair or deceptive if it is reasonably
10 likely to mislead. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 50 (2009).
11 Reasonableness of an action is determined in light of all the facts and
12 circumstances of a case. *Indust. Indem. Co. of the NW, Inc. v. Kallevig*, 114 Wn.2d
13 907, 920 (1990). To the extent POCO believed the Settlement Agreement with
14 FCIA protected it from criminal liability, such belief was unreasonable under the
15 circumstances. Therefore, POCO cannot meet the first element of a CPA claim and
16 FCIA is entitled to summary judgment on the claim.

17 Because the Court concludes FCIA is entitled to summary judgment on the
18 merits, it is unnecessary to analyze whether POCO's claims are preempted by
19 federal regulation. Additionally, POCO is not entitled to attorneys' fees or costs in
20 the instant suit, or for its criminal defense.

21 *Conclusion*

22 POCO's claims against FCIA fail as a matter of law. FCIA's motions for
23 summary judgment are granted. POCO's partial motion for summary judgment is
24 denied.

25 Accordingly, **IT IS ORDERED:**

26 **1. Defendant's Motion for Summary Judgment, ECF No. 26, is GRANTED.**

27 **2. Defendant's Motion for Summary Judgment as to Breach of Contract and**
28 **Unfair and Deceptive Practices Act Claims, ECF No. 27, is GRANTED.**

1 3. Defendant's Motion for Summary Judgment as to Material Misrepresentation,
2 ECF No. 28, is **GRANTED**.

3 4. Plaintiff's Motion for Partial Summary Judgment, ECF No. 33, is **DENIED**.

4 5. Judgment shall be entered in favor of Defendant.

5 6. All previously set court dates, including the trial date, are **STRICKEN**.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
7 enter this Order, enter judgment, provide copies to counsel and Plaintiff, and **close**
8 **the file.**

9 **DATED** this 25th day of March 2016.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

15 Stanley A. Bastian
16 United States District Judge
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